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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,022	05/31/2005	Peter Mikkelsen	742113-34	6147

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EXAMINER	
NGUYEN, PHONG H	
ART UNIT	PAPER NUMBER
3724	

NOTIFICATION DATE	DELIVERY MODE
01/10/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/532,022	MIKKELSEN ET AL.	
	Examiner	Art Unit	
	Phong H. Nguyen	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 May 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "generally" in claim 1 is a relative term which renders the claim indefinite. The term "generally" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al. (WO 01/32369 A1), hereinafter Jensen, in view of Ketels (5,702,295).

Regarding claims 1, 3, 4, 5, 8, 11 and 18, Jensen teaches a food cutting device comprising a cutting means 13, a scanning means 7, a conveying means (2, 3 and 15) and a control means (a computer system) for controlling and regulating a relevant cutting process parameters. See Figs. 1-2.

Jensen does not teach the conveying means having two conveyors forming a V-shaped configuration.

Ketels teaches a conveying means 2 having two conveyors 2.1 conveyors forming a V-shaped configuration for positioning workpieces. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide the conveying means of Jensen two conveyors in form of a V-shaped configuration as taught by Ketels for positioning workpieces.

Regarding claim 2, a first conveying unit 2, a second conveying unit 3 and a third conveying unit 15 are best seen in Fig. 2 in Jensen.

Regarding claim 6, the scanning unit being between the first and the second conveying units are best seen in Fig. 1 in Jensen.

Regarding claim 7, Jensen teaches the invention substantially as claimed except for the scanner being adapted to perform a 360° scanning of the products. At the time the invention was made, the use of a 360° scanner was well known in the art. Therefore, it would have been obvious to one skilled in the art to use a 360° scanner in the food-cutting device of Jensen for better scanning the dimensions of the products.

Regarding claim 9, Ketels teaches the invention substantially as claimed except for the angle between the two inclined conveyors 2.1. At the time the invention was

made it would have been an obvious matter of design choice to provide an appropriate angle between 100°-180° formed by the two inclined conveyors for accommodating a desired shape of a product.

Regarding claim 10, Ketels teaches the invention substantially as claimed except for the angle of inclination being automatically adjustable.

It has been held that the provision of adjustability, where need, is not a patentable advance. In re Brandt, 20 CCPA (Patents) 1005, 64 F.2d 693, 17 USPQ 295.

It has been held that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Rundell, 18 CCPA 1290, 48 F.2d 958, 9 USPQ 220.

Therefore, it would have been obvious to one skilled in the art to make the inclined conveyors automatically adjustable since such practice has been held as routine in the art.

Regarding claims 12 and 15, Ketels teaches the invention substantially as claimed except for the inclined conveyors being driven by a common drive means. At the time the invention was made, it would have been an obvious matter of design choice to provide a common drive means for the inclined conveyors for easier controlling the speed of the inclined conveyors.

Regarding claims 13 and 14, conveyor belts 2.1 are best seen in Fig. 1 in Ketels.

Regarding claim 16, Jensen and Ketels teach using a computer system to control conveyor speed and cutting rate.

Regarding claim 17, the rotating knife 10 is best seen in Fig. 2 in Jensen.

Response to Arguments

5. Applicant's arguments filed on 11/16/2007 have been fully considered but they are not persuasive.

The Applicant argues that it would not obvious to provide a V-shaped conveyor of Ketels to the cutting assembly of Jensen since Jensen's conveyors (3a and 3b) are separating conveyors, and the combination of Jensen and Ketels does not teach the upper conveying surfaces being angled relative to each other with adjacent edges of the upper conveying surfaces being in proximity to each other. These arguments are not persuasive. Ketels' conveyors are provided at conveyor 2 in Jensen for aligning and guiding a workpiece into the cutting station 5 instead of at conveyors (3a and 3b).

The Applicant defines two spaced apart edges of the conveyors 14a and 14b in Fig. 10 being adjacent. Therefore, two spaced apart edges of Ketels' conveyors when they are added to the Jensen's cutting apparatus is considered being adjacent. Therefore, Ketels' conveyors read on the claim language.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phong H. Nguyen whose telephone number is 571-272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy V. Eley/
Primary Examiner, A.U. 3724

PN:

January 4, 2008